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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 96-128
Provisions of the Telecommunications	)	
Act of 1996	)	

REPLY COMMENTS OF SPRINT CORPORATION

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SUMMARY

Sprint's reply comments concentrate on two principal issues: the "set use fee" versus "carrier-pays" approach to compensation, and the appropriate level of per-call compensation.

The "set use fee" approach, under which any per-call compensation ordered by the Commission would appear as a separate line item on the bill of the party paying for the call in question, is highly desirable in order to give visibility to the public of the payphone charges they are being called upon to pay. Furthermore, if IXCs are going to be responsible for tracking calls and remitting payments to payphone service providers (PSPs), the set use fee approach adds very little to the transaction costs: it merely requires IXCs to undertake one-time development costs of the capability of reflecting the line item on customers' bills (or to deduct additional charges from prepaid cards). The remaining costs of tracking calls and administering payment to hundreds of PSPs would be the same regardless of whether the "set use fee" or "carrier-pays" approach is adopted. However, if the Commission determines not to adopt the "set use fee" approach, then it should place the responsibility for tracking calls and remitting payment to PSPs on the LECs, rather than on the IXCs. The IXCs will need to furnish LECs with call completion

factors so that IXCs are only billed for -- and PSPs are only paid for -- completed calls, but placing this responsibility on the LECs will eliminate the complexities of requiring hundreds of IXCs to track calls from hundreds of PSPs.

With respect to the level of compensation, Sprint reiterates its support for the Commission's tentative view that the relevant costs to which PSPs are entitled are marginal costs, which are limited to the additional wear and tear on a payphone when it is used for an additional call. Costs are only one side of the equation: a per-call compensation plan should be instituted only if the existing revenue streams PSPs receive from other call types are insufficient to also cover the marginal costs of these non-revenue-producing calls. There is no evidence on the record to show that there is any need for such compensation. Indeed, cost data submitted by the RBOC Coalition, together with revenue data submitted by APCC and the RBOC Coalition, indicate that PSP revenues are roughly double their total costs. Thus, unless or until a genuine need for additional revenues can be shown by the payphone industry, and probative evidence of the marginal costs of handling additional calls is offered, the Commission either should not prescribe a per-call compensation plan or, if it feels compelled to do so by statute, should set the compensation rate at zero.

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In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))))	CC Docket No. 96-128

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby replies to the initial comments of other parties in response to the Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 96-254, released June 6, 1996).

I. INTRODUCTION AND MISCELLANEOUS ISSUES

In view of the large number of parties filing initial comments, the brief time afforded for reply comments does not permit comprehensive discussion of all of the issues raised in this proceeding. Therefore, Sprint will confine its reply comments principally to two issues: the "set use fee" versus "carrier-pays" method for payment of compensation, and the level of compensation itself. However, there are a few other issues that merit brief comment.

With respect to the scope of payphone calls covered by the rulemaking (NPRM, ¶¶15-18), Sprint reiterates that neither international calls, nor any calls -- 0+ or otherwise -- handled by the presubscribed 0+ carrier, can be included in any per-call compensation scheme adopted by the Commission. Those who support the Commission's tentative view that international calls can be included offer no basis for concluding that the Commission has the jurisdiction to do so. Likewise, the parties that would include 0+ calls (and other calls handled by the 0+ carrier) in a per-call compensation scheme fail to reconcile their position with §226(e)(2) which, as Sprint pointed out in its comments (at 6), the Commission has interpreted to preclude compensation for any calls handled by the presubscribed operator service provider.

With respect to the Commission's concern about fraudulent abuse of per-call compensation (¶23), Sprint maintains that the best way to minimize such fraud is to ensure that the level of compensation is no greater than the marginal cost of the use of the phone. However, Sprint also agrees with Frontier's suggestion (at 22-23) that the Commission must define what constitutes a pay telephone to avoid the possibility that any telephone can be designated as a pay telephone in order to enable the owner of that phone to collect per-call compensation.

Sprint also agrees with the RBOC Coalition (at 26-27) that existing LEC payphones should be grandfathered for purposes of Part 68 registration requirements (NPRM ¶45) and for purposes of establishing demarcation points (NPRM ¶47). Although demarcation points, consistent with existing standards, should be established for new installations of LEC payphones, requiring installation of network interfaces for all existing payphones would simply increase costs for no apparent purpose.

Finally, Sprint categorically denies a claim that one of its LECs attempted to coerce a premises owner into presubscribing its payphones to Sprint by threatening to remove the phones, and regrets the apparent misunderstanding that led to this unfounded charge.[1]

II. THE "SET USE FEE" VERSUS "CARRIER-PAYS" (NPRM ¶¶24-28)

In its initial comments (at 11-13), Sprint supported the set use fee mechanism, as described in the NPRM, as the best means of collecting and remitting payments to the payphone service providers (PSPs). Although some other parties share Sprint's support for the set use fee mechanism (see e.g., MCI at 6-7), a far larger number of commenting parties support the carrier-pays approach.

The New York Department of Public Service (at 7) expresses concern that the appearance of a set use fee on the

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[1] See National Association of RV Parks and Campgrounds at 2. In fact, Sprint's Florida LEC decided to remove the payphones from the campground in question because the phones were failing to generate sufficient revenues. The LEC explained to the premises owner that he could keep the LEC's payphones in place by paying the charges associated with semi-public phones, in which case he could retain the existing 0+ carrier for the phones, or that he could obtain payphones from private vendors.

consumers' bills would increase the already considerable public dissatisfaction with payphones. Sprint believes that this concern is legitimate only if the set use fee is set at too high a level. Indeed, the principal virtue of the set use fee is that it gives visibility to the public of the cost of any per-call compensation program the Commission adopts. This should be regarded as an important check on the reasonableness of the level of any per-call compensation the Commission orders. If the charges are too high, consumers (and large 800 and 888 toll free call (TFC) subscribers) have every right to express their dissatisfaction to the Commission. If, instead, the costs of a per-call entitlement program are buried in transmission rates, the amount of compensation being granted to PSPs will have no visibility to the persons and firms that ultimately must pay that compensation.

The opposition of some other parties to the set use fee concept appears to be based, at least in part, on a misunderstanding of the concept. For example, LDDS WorldCom (at 12) interprets the set use fee as being imposed on the "customer who used a pay telephone to make a call." Under that interpretation, an IXC would have to figure out a means of billing the set use fee to the calling party even if that party were not billed for the call itself (e.g., in the case of a collect call or a toll free call). But it is clear from the Commission's definition of the set use fee approach, in

¶26 of the NPRM, that it is the party paying for the call, not necessarily the calling party, that will be billed the set use fee:

> In the case of the subscriber 800 and other toll-free number calls, the set use fee could be collected from the subscriber. For access code calls and operator-assisted calls, the set use fee would be collected from the end user that is billed for the call.

Thus, the set use fee would only be billed to the party that is also being billed for the underlying transmission.

Many parties that oppose the set use fee concept simply reiterate the Commission's belief that it would result in higher transaction costs.[2] Assuming IXCs are responsible for tracking calls and compensating the PSPs, an assumption discussed in the following paragraph, the set use fee would not increase the transaction costs substantially in the long run, as compared with "carrier-pays." The set use fee would merely require one-time systems development to incorporate an additional line on bills for IXC customers that would be billed in any event (since they are paying the transmission charges for the underlying call) or to deduct the additional amount from a prepaid card call. The more significant transaction costs consist of developing the capability, by all IXCs, to track all payphone calls. Those costs would be

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[2] See e.g., California Public Utilities Commission et al. at 13, and Public Utilities Commission of Ohio at 8.

incurred, regardless of whether carrier-pays or the set use fee is adopted, so long as IXCs are charged with responsibility for paying the PSPs. As it indicated in its initial comments (at 12), Sprint believes the transaction costs required for the set use fee approach are far outweighed by the public interest benefit of making the costs of per-call compensation visible to the consumers that will have to absorb such costs.

However, in the event the Commission determines not to adopt the set use fee approach, the Commission should assign the responsibility for tracking calls and paying the PSPs to the local exchange carriers, as many IXCs advocate.[3] This would minimize the transactions costs overall. Instead of requiring hundreds of IXCs to develop call tracking capabilities, LECs could track call from their own payphones and from PPO phones connected to their networks, and could bulk-bill each IXC for its total per-call compensation obligation and could remit a single check to each PSP representing the monies due from all IXCs. Alternatively, the LEC could delegate the function of paying PSPs to a clearinghouse if it so desired.

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[3] See e.g., LDDS WorldCom at 14-18; Frontier at 12-17; Cable and Wireless at 11-13; and CompTel at 6-11. The LECs would be entitled to an appropriate level of compensation for performing this function.

Making the LEC responsible for these functions presumes that the LECs can accurately track completed calls, and as Sprint indicated in its initial comments (at 14), it is not aware that any LEC now has the capability to do so. However, as other parties have suggested, to take account of calls that involve reaching a "platform", such as prepaid card calls, calling card calls, and other access code operator services calls, each IXC could supply the LEC with a factor that takes into account experienced call completion rates (much as IXCs have supplied percentage of interstate use (PIU) factors to the LECs for other purposes).

Finally, there is absolutely no merit in the Telecommunications Resellers Association's proposal (at 12-15) that per-call compensation should only be levied on IXCs whose total revenues exceed $1 billion annually, in order to shield smaller carriers from cost increases. Such exemption of smaller carriers is not contemplated by §276 and is likely to be grounds for judicial reversal. Cf. Competitive Telecommunications Association v. FCC, CADC No. 95-1168, decided July 5, 1996, slip op. 15, 17.

III. PER-CALL COMPENSATION AMOUNT (NPRM ¶¶35-40)

PSPs are entitled, as §276(b)(1)(A) contemplates, to "fair[] compensat[ion] for each and every completed intrastate and interstate call using their payphone." At the same time, the public that ultimately must pay this compensation is entitled to the assurance that any such compensation ordered by the Commission is no greater than absolutely necessary to accomplish that end.

Sprint reiterates its support of the Commission's tentative adoption of a marginal cost standard (see nn.54 and 64 of the NPRM) as the appropriate measure of the relevant costs. The vast majority of payphones are placed voluntarily by PSPs (private payphone owners ("PPOs") and LECs alike) with complete freedom of entry and exit.[4] Therefore, it is reasonable to presume that the revenue streams under their control[5] will, at a minimum, cover all of the fixed costs of the payphones. The only additional costs of handling other non-revenue-producing calls (dial-around calls, subscriber toll free calls, etc.) are limited to the additional wear and tear on the keypad or other parts of the phone.[6] The fixed

[4] To the extent states mandate placement of unprofitable phones, such phones should be provided under a state-administered, competitively neutral, universal service program.

[5] These consist of revenues from coin calls, revenues from 0+ intraLATA calls (in the case of LECs), revenues from 0+ calls (which many private payphone providers handle themselves through the use of "smart" payphones), and commissions from the 0+ presubscribed carrier (which PPOs now receive and LECs will be entitled to receive upon the implementation of §276).

[6] In n.11 at 18 of Sprint's initial comments, Sprint alluded to the possibility that there also may be some "opportunity costs" when a caller making a dial-around or toll free call may displace a caller wishing to make a coin call or 0+ call. Sprint emphasizes that it believes such opportunity costs, if any, are highly speculative. Only if the displaced caller is unwilling to wait or cannot find another phone nearby operated by the same PSP would the PSP be deprived of any revenue to

costs of providing payphone service -- the local phone line, commission payments to premises owners, the capital investment in the instrument itself -- cannot be considered attributable in any sense to the calls which traditionally have not been revenue-generating for PSPs. They do not place phones in order to handle non-revenue-generating calls; instead, they retain complete freedom to remove the payphones if the revenue streams they generate are insufficient to cover their costs.

The marginal costs of handling these additional types of calls, however, are only one side of the equation. Sprint submits that unless PSPs can demonstrate that their revenues from other sources are not sufficient to cover these marginal costs, they are not entitled to any additional compensation. If they are already covering all of their costs (including the marginal costs of non-revenue-producing calls), any per-call compensation on top of those revenue streams would simply be a windfall to the PSPs. There is no indication, either in the plain words of Section 276 or in the relevant legislative history, that Congress intended to create a new form of

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which it would otherwise be entitled. Thus, Sprint's recognition of the hypothetical existence of such opportunity costs should not be construed as support for the notion that the persons making dial-around calls or toll free calls would otherwise have made 0+ calls which are commissionable for the PSP, and that such foregone commissions constitute a legitimate cost. Callers using the phone for a call other than a coin call or 0+ call have made a conscious decision not to make either type of call and cannot be assumed to be willing, under any circumstances, to make a coin call or 0+ call.

corporate welfare for those who do not need it. In short, the Commission should not implement per-call compensation unless or until it determines that the revenue streams already available to efficient PSPs do not suffice to cover the marginal costs of the calls not under their partial or complete control.

If the Commission were to embark on an unwarranted per-call compensation plan, it is far from clear who would benefit from such a plan. Although PSPs would be overcompensated in the first instance, if the payphone market is workably competitive, the higher profits may simply be passed on to premises owners in the form of higher commission payments. However, it <u>is</u> clear who would suffer from such a program: the consumers that ultimately must foot the bill for telecommunications services. These consumers have suffered in the past from exorbitant rates for calls from payphones (and other aggregator phones). Their frustration has already resulted in Congressional action once (in the form of the Telephone Operator Consumer Services Improvement Act of 1990, codified as §226 of the Act), and they continue to swamp the Commission with informal complaints today.[7]

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[7] The Commission has reported that it received more than 5,000 complaints about OSP rates between August 1, 1994 and August 31, 1995. <u>See</u> <u>Billed Party Preference for InterLATA 0+ Calls</u>, Second Further Notice of Proposed Rulemaking (FCC 96-253, released June 6, 1996), n.22 at ¶8.

No party has submitted comprehensive information concerning both the marginal costs of handling additional calls and the revenue streams PSPs now receive.[8] Thus, Sprint submits that on this record, the Commission cannot responsibly find that any per-call compensation is necessary at this time.[9] The levels of compensation (and the bases therefor) urged by some of the would-be beneficiaries of per-call compensation are well outside the realm of reason.

First, APCC offers no support for its claim (at 11) that in requiring "fair" compensation, Section 276 "embraces more than cost recovery."[10] Webster's Third New International Dictionary (unabridged, 1976 edition) defines "fair" as synonymous with "just" "reasonable" "passable" and "sufficient". Nothing in the use of "fair" suggests that

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[8] The only party to submit any dissagregated costs of operating payphones was Peoples Telephone at 21. The costs it shows are unaudited fully allocated costs that include overheads and return on investment and taxes. Most of these costs are irrelevant to marginal costs; indeed, the only cost category it reports that relates to the marginal costs of using a payphone for a non-revenue-producing call are "Field Service/Collection Costs," which it claims are $44.20 per month or $.07 per call based on its experienced call volume of 665 calls per phone per month. Even those costs are higher than the marginal costs of using a payphone for the non-coin calls here at issue, because they include coin collection costs which are not broken out separately.

[9] A fortiori, there is no warrant for an interim compensation plan for PPOs.

[10] See also, Illinois Public Telecommunications Association ("IPTA"), which argues (at 6) for a level of compensation that "exceeds" costs.

Congress intended that the level of compensation be over-generous or that it unjustly enrich the PSPs. Thus, costs must be the touchstone of the determination of a fair level of compensation, and as discussed above, the Commission is entirely correct in viewing the appropriate costs in this context as the marginal costs. APCC argues (at 11) that since the vast majority of payphone costs are fixed in the short run, if a PSP's revenue on each call covered only the marginal cost of that call, no PSP could stay in business. However, PSPs clearly obtain revenues from types of calls within their control -- coin calls and 0+ calls -- well in excess of marginal costs and more than sufficient to cover their fixed costs. If those revenues fail to do so, they have every right to remove the payphone from service. And if there is some genuine public interest need to keep that payphone in service, the state should be able to do so through an equitable and competitively neutral universal service funding mechanism.

Another facile suggestion is that the compensation for such calls ought to be "market based" -- i.e., should reflect the value that IXCs place on receiving such calls from payphones. The parties that advocate this approach (e.g., the RBOC Coalition at 8 and IPTA at 6) assert that the commission rates OSPs pay on 0+ calls is the measure of such market value. In fact, the market value IXCs place on dial-around, toll free and prepaid card calls is zero: they do not voluntarily pay anything to PSPs for receiving such calls from PSPs.[11]

The RBOC Coalition also leads with its chin in arguing (at 6) that "the party that obtains the primary economic benefit for the call should be responsible for compensating the PSP." As is well documented in the record,[12] the vast majority of calls here in question are subscriber 800 calls. The competition in the toll free market is quite fierce and IXC margins are quite low. The RBOCs, by contrast, receive access revenues from such calls at levels widely acknowledged to be several multiples above costs. Thus, on a margin basis, the primary economic beneficiary of such calls is not the 800 carrier, but rather the LEC providing access for such calls.

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[11] Although some IXCs may pay compensation to PPOs for dial-around calls from phones for which they are the presubscribed 0+ carrier, this is a response to the Commission's mandated dial-around compensation plan, not market forces. In this regard, any equitable claim that PSPs should be entitled to compensation from dial-around calls because they are required to make their phones available for such calls is similarly without merit. The trend away from 0+ calling to dial-around calling for operator services calls from payphones can largely be attributed to the actions by many payphone providers or premises owners to choose 0+ carriers that charge high rates to the public, so that they can receive hefty commissions from the 0+ carrier. Once the public began to sense that placing 0+ calls could result in outrageous charges, they naturally began to look for ways to protect themselves from such charges. Having PSPs seek compensation based on the high commissions paid for 0+ calls for dial-around operator services calls -- and even subscriber toll free calls where the calling party has no control over the carrier handling the call -- is akin to killing one's parents and then pleading for mercy because one is an orphan.

[12] See e.g., APCC at 6.

The per-call rates sought by the RBOC Coalition and the PPOs -- based on their flawed analysis of how "fair" compensation should be measured -- are wholly without merit. The RBOC Coalition (perhaps out of embarrassment) is vague as to the exact amount it is seeking, but appears to advocate (at 9-11) compensation in the range of 80-90¢ per call. This amount, predicated on 0+ commissions to very large aggregators, is more than double Sprint's gross revenues from a typical toll free subscriber call, the call type that accounts for the greatest percentage of interLATA calls that would be subject to per-call compensation. Rates in this range would also make fraudulent use of payphones a highly profitable business for PSPs. Assuming it takes 15 seconds to dial and become connected to a toll free number, with a rate of 90 cents per call, a PSP could generate $216 per hour from continual dialing of toll free numbers. Such short-run greed on the RBOCs' part would make the use of pay telephones so costly that the likely long term result would be that toll free subscribers would refuse to accept calls from payphones and consumers would use other services (e.g., PCS) for away-from-home calls. In the meantime, harm to consumers and toll free subscribers would be substantial.

The PPOs show less avarice than the RBOC Coalition.[13] These parties base their requests either exclusively on commissions paid for 0+ calls or on an updating of at least some of the factors the Commission employed when it first prescribed dial-around compensation under Section 226. However, as Sprint explained in its initial comments (at 19-20) those bases were flawed from the outset and one of them -- reliance on commissions paid for 0+ calls -- was internally inconsistent with the Commission's rejection of the PPOs' argument that dial-around compensation should be based on the revenues foregone when consumers dial-around the presubscribed carrier for an operator services call.

While, as noted above, none of the parties seeking compensation has submitted comprehensive data as to the need for a per-call compensation plan or the marginal costs of handling non-revenue-producing calls, the data that some of these parties submit nonetheless provide some useful insights into payphone costs and revenues, data which reinforce Sprint's belief that it is entirely premature for the Commission to adopt any per-call compensation plan at a rate greater than zero. First, it appears that the RBOCs

[13] APCC (at 31) seeks 40¢ per call if the presubscribed compensation extends to local coin calls and 80¢ per non-coin call if coin calls are excluded from the Commission's plan. People's Telephone (at 3) seeks a rate of 45¢ per call. ITPA (at 13-14) asks for a rate of 55¢ per call. The New Jersey Payphone Association (at 8) requests 50¢ per call.

experience significantly lower calling volumes per phone than PPOs. APCC claims (at 5) that its members' payphones produce an average of 700 completed calls per month, of which 500 are coin-paid calls. By contrast, the RBOCs' data suggest that they experience an average of only 500 calls per month.[14] This suggests that the RBOCs are less efficient than PPOs in locating their payphones. If the Commission believes it has sufficient data to calculate marginal costs, it should utilize the higher call volumes experienced by PPOs in order to avoid rewarding the RBOCs with their less efficient placement of phones.

Second, the revenue and cost data submitted by APCC and the RBOC Coalition amply prove Sprint's point that, on this record, they have shown no need for any additional revenue streams to cover their total costs. The RBOC Coalition (attachment at 8-9) asserts that the total embedded direct cost per payphone amounts to $1744 per year. The derivation of this calculation is not clearly explained, and no backup data are provided, but accepting that calculation at face value,[15] these costs are far exceeded by the revenues payphone

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[14] This estimate is derived from data on p. 9 of the attachment to the RBOC Coalition's comments, where it is asserted that the embedded costs per payphone amount to $1,744 per year and that the average per call cost was $0.29. Dividing $1744 by $0.29 yields 6,014 calls per year, or 501 calls per month.

[15] Other cost data in the record suggest that the RBOCs' estimate of payphone costs may be far too high. As discussed at 11-12 of Appendix B to ITTA's comments, the Illinois Commerce Commission's staff has estimated the monthly costs

providers can be expected to generate. The RBOC study estimates that PPOs receive $1647 per year in non-coin compensation (presumably from 0+ commissions). The RBOCs, of course, can be expected to generate similar non-coin revenues when they are allowed to participate in the choice of the presubscribed 0+ carrier. (Moreover, they now receive all 0+ intraLATA calls from their payphones.) In addition, APCC estimates (at 14) that PPOs receive $150 in coin revenues per month, or $1800 per year. Thus, a typical payphone can be expected to generate $3447 in revenues for the PSP on an annual basis, a revenue level that is roughly double the RBOCs' estimated cost of $1744 per year. This is a clear indication that any per call compensation required by this Commission would simply be government largess at the consumers' expense.

In short, the most that can be gleaned from the cost and revenue information that has been supplied by those seeking per-call compensation is that the costs, if any, of handling non-revenue-producing calls are de minimis and that the revenues received from other sources are more than sufficient to cover the total costs of providing payphone services.

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for operating a pay station, including line charges, coin collection, commissions to premises owners and sales tax, to be $89.92 per month of $1079 per year. Dividing these costs -- which are far above the marginal cost of making an additional call on a payphone, by the average call volumes experienced by PPOs, as reported by APCC, results in a fully allocated cost of less than 13¢ per call.

Accordingly, there is no justification for embarking on a per-call compensation plan at this time. If the Commission nonetheless feels compelled by the language of §276(b)(1)(A) to establish a per-call compensation plan, it should set the rate at zero unless or until genuine need for such compensation has been shown by those seeking it.

Respectfully submitted,

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